



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2011, for compensation for mail, parking and photocopy expenses, for the Tenant's time preparing for dispute resolution proceedings and for damages due to the Landlord allegedly harassing the Tenant by serving her with a Notice to End Tenancy on December 17, 2011 and to recover the filing fee for this proceeding.

I find that the Tenant's claim for compensation for her time and expenses associated with bringing and participating in dispute resolution proceedings is not compensable because there is no provision under the Act for the recovery of costs other than the filing fee. Consequently, that part of her compensation claim is dismissed without leave to reapply.

RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the Tenant's application for compensation for damages for allegedly harassing her by serving her with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is not significantly related to the issue of cancelling the Notice itself and for that reason it is dismissed with leave to reapply. I also note that in *Whiffin v. Glass & Glass (July 26, 1996) Vancouver Registry No. F882525 (BCSC)*, the court held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenant's remedy is to dispute the notice ending the tenancy once given.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on February 15, 2011 and expires on February 14, 2012. Rent is \$1,950.00 per month payable in advance on the 15th day of each month. In previous proceedings heard on December 8, 2011, the Tenant was granted a monetary award of \$5,314.37 and a further order that “she may apply this amount to rent due or coming due.” The Landlords applied for a review of that Decision on January 5, 2012, however that application was dismissed on January 9, 2012.

The Parties agree that the Tenant put stop payments on her rent cheques for the periods, November 15 – December 14, 2011 and December 15, 2011 – January 14, 2012. The Tenant said she withheld her rent for these periods because she intended to apply the monetary award she received on December 8, 2011 to them. The Tenant admitted that she did not advise the Landlords about her intentions until December 19, 2011 when she said she sent the Landlord’s agent an e-mail. The Tenant did not provide a copy of this e-mail as evidence at the hearing. The Landlord, E.J., said he did not realize the Tenant was deducting a monetary award from the past due rent until he received her written submissions with the hearing package on December 29, 2011.

The Parties agree that on December 17, 2011, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2011 by posting it on the rental unit door. The Tenant claimed she received this Notice on December 20, 2011.

Analysis

Section 46(1) of the Act says that a Landlord may serve a Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if rent is unpaid on any date after rent is due. Section 46(3) of the Act says that **a 10 Day Notice has no effect if the amount of rent that is unpaid is an amount the Tenant is permitted under the Act to deduct from rent.**

I find that when the Landlords served the Tenant with the 10 Day Notice on December 17, 2011, rent for the periods, November 15 – December 14, 2011 and December 15, 2011 was due and unpaid. I also find that while the terms of the Order made on December 8, 2011 permitted the Tenant to apply a monetary award to rent, it did not specify a rental period but rather left it to the Tenant’s discretion. Consequently, I find that the unpaid rent remained outstanding until such time as the Tenant advised the Landlords of her intention to apply the monetary award to it. Based on the evidence before me, I conclude that the Tenant probably received the 10 Day Notice earlier than December 20, 2011 and only advised the Landlords of her intention to apply the monetary award to the outstanding rent at that time or on December 19, 2011. In any event, I find that the Tenant’s act of advising the Landlords that she was applying the

monetary award to rent for the period, November 15, 2011 to January 14, 2012, was sufficient to cancel the 10 Day Notice.

I find however, that this is not an appropriate case to order that the Landlords bear the cost of the filing fee paid by the Tenant for this proceeding. In particular, I find that a 10 Day Notice likely would not have been served on the Tenant on December 17, 2011 had she advised the Landlords of her intention to apply the monetary award to the unpaid rent on December 15, 2011 when it was due.

Conclusion

The Tenant's application to cancel the 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2011 is cancelled. The Tenant's application for compensation (for alleged harassment) is dismissed with leave to reapply. The Tenant's application for compensation for costs and to recover the filing fee for this proceeding and dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 10, 2012.

Residential Tenancy Branch